

Fleming Companies Claim  
10567

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>IN RE</b>  <b>FLEMING COMPANIES, INC ,</b>  <b>DEBTOR</b>	· · · · · ·	<b>CHAPTER 11</b>  <b>CASE NO 03-10945</b>
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**PROOF OF CLAIM OF  
FLOWERVIEW ASSOCIATES LIMITED PARTNERSHIP  
REGARDING THE PREMISES LOCATED AT  
EAST PARK PLAZA SHOPPING CENTER, 130 NORTH 66<sup>TH</sup> STREET,  
LINCOLN, NEBRASKA**

1       Flowerview Associates Limited Partnership, as successor-in-interest to East Park Plaza, Inc , with a business address of 99 Park Avenue, Suite 1820, New York, New York 10016, is the Lessor (“Lessor”) under a Lease Agreement , dated as of November 11, 1977, as amended from time to time, between Lessor and the Debtor relating to the premises located at East Park Plaza Shopping Center, 130 North 66<sup>th</sup> Street, Lincoln, Nebraska (the “Lease”) A true and accurate copy of the Lease and the amendments thereto are annexed hereto as Exhibit A and are incorporated herein by reference

2       The Debtor is obligated under the Lease to pay rent and other amounts (collectively "Rent") on an ongoing basis

3       The Lessor recognizes that the Lease has been neither assumed nor rejected under Section 365 of the Code, and that a proof of claim need not be filed unless and until the Lease is so rejected. This Proof of Claim is filed as a precaution, and it is the intention of the Lessor to supplement this Proof of Claim if and to the extent necessary. In any event, the Debtor's obligations under the Lease which are first due post-petition must be paid currently as administrative expenses of the Debtor's estate, and the Lessor reserves all of its rights with regard to the collection of such amounts.

4       This Proof of Claim is for the following unliquidated amounts:

- a   an unliquidated amount for all other amounts due and owing and amounts which will continue to accrue under the lease, and
- b   all Rent now owing and hereafter owing through the remaining term of the Lease

5       To the best of the Lessor's knowledge, no judgment has been rendered on the Claim.

6       To the best of the Lessor's knowledge, the amount of all payments on the Claim has been credited and deducted for the purpose of making this Proof of Claim.

7        To the best of the Lessor's knowledge, the Claim is not subject to any setoff or  
counterclaim

8        The Claim is an unsecured claim

9        The Lessor does not waive any right or rights of action that the Lessor has or  
may have against the Debtor or any other person or persons, and the Lessor expressly reserves  
such rights. The Lessor also expressly reserves the right to amend or supplement this Claim  
in any respect

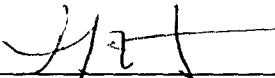
*[Remainder of page intentionally left blank ]*

10 All notices and communications concerning this proof of claim shall be addressed as follows

Ira H Goldman, Esq  
Shipman & Goodwin LLP  
One American Row  
Hartford, CT 06103-2819  
(860) 251-5820

Paul Glantz  
Flowerview Associates Limited Partnership  
99 Park Avenue, Suite 1820  
New York, NY 10016

DATED September 9, 2003

  
\_\_\_\_\_  
Irwin L. Glantz  
[Title] President  
Flowerview Associates Limited Partnership

**Penalty for Presenting Fraudulent Claim** Fine of up to \$500,000 or imprisonment for up to five years, or both Title 18, U S C , §§152 and 3571

NOTICE OF EXISTENCE OF LEASE

STATE OF NEBRASKA,  
COUNTY OF LANCASTER,

Notice is hereby given that a Build and Lease Agreement dated the 11 day of November, 1977, has been executed by EAST PARK PLAZA, INC , a Nebraska corporation of Lincoln, Nebraska, as LESSOR, and FLEMING COMPANIES, INC , a Kansas corporation of Topeka, Kansas, maintaining an office in Lincoln, Nebraska, as LESSEE, covering a portion of the improvements, constructed or to be constructed on the following described real estate

LAND  
DESCRIP-  
TION

Lot 198 of Irregular Tracts in the SE $\frac{1}{4}$  of Section 21, T10N, R7E A part of Lot 135, Irregular Tracts in the SE $\frac{1}{4}$  of Section 21, T10N, R7E of the 6th Principal Meridian, Lancaster County, Nebraska, more particularly described as follows

Beginning at a point 33 0 feet easterly of and 105 0 feet northerly of a pot located at the intersection of the centerline of 66th Street with the centerline of "O" Street, thence southeasterly, a distance of 64 2 feet to a point 55 0 feet northerly of the south line of the said SE $\frac{1}{4}$ , thence easterly, along a line 55 0 feet northerly of and parallel with the said south line, a distance of 210 0 feet, thence northerly, a distance of 55 0 feet to a point 110 0 feet northerly of the said south line, thence easterly, a distance of 11 8 feet, thence northerly, parallel with the centerline of 66th Street, a distance of 185.0 feet, thence westerly, parallel with the said south line, a distance of 262 0 feet to a point 33 0 feet easterly of the centerline of 66th Street, thence southerly, a distance of 190 0 feet to the point of beginning

Containing 1 40 acres, more or less.

Lot 199 of Irregular Tracts in the SE $\frac{1}{4}$  of Section 21, T10N, R7E A part of Lot 186, Irregular Tracts in the SE $\frac{1}{4}$  of Section 21, T10N, R7E of the 6th Principal Meridian, Lancaster County, Nebraska, more particularly described as follows.

Beginning at a point 33 0 feet easterly and 295 0 feet northerly of a pot located at the intersection of the centerline of 66th Street with the centerline of "O" Street, thence northerly, along a line parallel with

and 33 0 feet easterly from the centerline of 66th Street, a distance of 1067 69 feet, more or less, to the centerline of the channel of Dead Man's Run, thence easterly, on an angle of 97° 00' right, a distance of 445 0 feet to a point of curvature, said curve having a radius of 716 20 feet, thence on a curve to the right, in a southeasterly direction, to a point on a line midway between the centerline of 66th Street and the east line of the said SE¼; thence southerly, along the said midway line to a point 55 0 feet northerly of the said south line, thence westerly, parallel with and 55 0 feet northerly of the said south line, a distance of 440 0 feet, thence northerly, a distance of 55 0 feet, thence westerly parallel with the said south line, a distance of 33 2 feet; thence northerly, parallel with the centerline of 66th Street, a distance of 185 0 feet, thence westerly, a distance of 262 0 feet to the point of beginning

Containing 19 60 acres, more or less

Among other provisions said lease provides for an original term of twenty (20) years plus options granted to LESSEE to extend said lease for three (3) additional terms of five (5) years each

This notice does not change, alter or vary any covenant, condition, or agreement contained in said Build and Lease Agreement, but is executed to provide a convenient memorandum for recording in the office of the County Clerk of Lancaster County, Nebraska

Executed this 11 day of November, 1977.

LESSOR -

EAST PARK PLAZA, INC.

By

David D. Peters  
President

(SEAL)

ATTEST:

Mo Srauf  
Secretary

LESSEE -

FLEMING COMPANIES, INC.

By

Ed. R. Rasmussen  
Vice President

(SEAL)

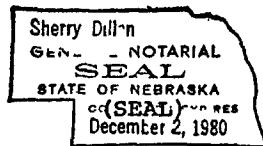
ATTEST

Robert W. Smith  
Assistant Secretary

STATE OF NEBRASKA, )  
 ) ss  
COUNTY OF LANCASTER, )

On this 19 day of October, 1977, before me, the undersigned, a Notary Public in and for said County, personally appeared Edmund J. Ellis, President of EAST PARK PLAZA, INC., to me personally known to be the President and the identical person whose name is affixed to the above instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of the said EAST PARK PLAZA, INC., and that the corporate seal of the said EAST PARK PLAZA, INC., was thereto affixed by its authority

WITNESS my hand and notarial seal the day and year last above written



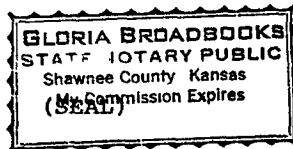
Sherry Dillon  
Notary Public

My commission expires Dec 2 1980.

STATE OF KANSAS, )  
 ) ss.  
COUNTY OF SHAWNEE, )

BE IT REMEMBERED, that on this 11 day of November, A.D. , 1977, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came D. R. Kattinbach, Vice President of FLEMING COMPANIES, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, and Robert W. Smith, Assistant Secretary of said corporation, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written



Gloria Broadbooks  
Notary Public

My commission expires 10-15-78



BUILD AND LEASE AGREEMENT

This Agreement is made and entered into this 11 day of November, 1977, by and between EAST PARK PLAZA, INC., a Nebraska corporation, whose address is 525 South 13th Street, Lincoln, Nebraska, 68508, hereinafter called the LESSOR, and FLEMING COMPANIES, INC., a Kansas corporation whose home office is at Topeka, Kansas, hereinafter called the LESSEE.

WITNESSETH.

WHEREAS, the LESSOR desires to construct a building, (hereinafter called "the premises"), containing approximately 25,000 square feet and the surrounding parking and common areas as delineated on Exhibit A attached hereto and made a part hereof, and constituting a part of the East Park Plaza Shopping Center, which center is, or will be, located upon the following described real estate

LAND  
DESCRIP-  
TION

Lot 198 of Irregular Tracts in the SE $\frac{1}{4}$  of Section 21, T10N, R7E A part of Lot 135, Irregular Tracts in the SE $\frac{1}{4}$  of Section 21, T10N, R7E of the 6th Principal Meridian, Lancaster County, Nebraska, more particularly described as follows

Beginning at a point 33 0 feet easterly of and 105 0 feet northerly of a pot located at the intersection of the centerline of 66th Street with the centerline of "O" Street, thence southeasterly, a distance of 64 2 feet to a point 55 0 feet northerly of the south line of the said SE $\frac{1}{4}$ ; thence easterly, along a line 55 0 feet northerly of and parallel with the said south line, a distance of 210 0 feet, thence northerly, a distance of 55 0 feet to a point 110.0 feet northerly of the said south line, thence easterly, a distance of 11 8 feet, thence northerly, parallel with the centerline of 66th Street, a distance of 185 0 feet, thence westerly, parallel with the said south line, a distance of 262 0 feet to a point 33.0 feet easterly of the centerline of 66th Street, thence southerly, a distance of 190 0 feet to the point of beginning.

Containing 1 40 acres, more or less

Lot 199 of Irregular Tracts in the SE $\frac{1}{4}$  of Section 21, T10N, R7E A part of Lot 186, Irregular Tracts in the SE $\frac{1}{4}$  of Section 21, T10N, R7E of the 6th Principal

Meridian, Lancaster County, Nebraska, more particularly described as follows

Beginning at a point 33 0 feet easterly and 295 0 feet northerly of a pot located at the intersection of the centerline of 66th Street with the centerline of "O" Street; thence northerly, along a line parallel with and 33 0 feet easterly from the centerline of 66th Street, a distance of 1067 69 feet, more or less, to the centerline of the channel of Dead Man's Run, thence easterly, on an angle of 97° 00' right, a distance of 445 0 feet to a point of curvature, said curve having a radius of 716 20 feet, thence on a curve to the right, in a southeasterly direction, to a point on a line midway between the centerline of 66th Street and the east line of the said SE¼, thence southerly, along the said midway line to a point 55 0 feet northerly of the said south line, thence westerly, parallel with and 55 0 feet northerly of the said south line, a distance of 440 0 feet, thence northerly, a distance of 55 0 feet, thence westerly parallel with the said south line, a distance of 33 2 feet, thence northerly, parallel with the centerline of 66th Street, a distance of 185 0 feet, thence westerly, a distance of 262 0 feet to the point of beginning

Containing 19 60 acres, more or less

(hereinafter referred to as "the shopping center"), and the LESSEE desires to lease the premises upon the terms and conditions hereinafter set forth with LESSOR hereby granting to LESSEE the rights of ingress and egress, during the term of this lease and all extensions thereof, if exercised, to, upon and over the aforescribed real estate

NOW, THEREFORE, in consideration of the rents to be paid and the mutual covenants to be performed, the parties hereto agree as follows

OWNER-  
SHIP

1 The LESSOR covenants that it has an option to purchase the aforescribed real estate, which it intends to exercise, and will have good title to the aforescribed real estate, and that the LESSEE, upon paying the rentals herein reserved and observing, performing and keeping all and singular the covenants and agreements herein specified to be kept and performed by LESSEE, shall, and may lawfully, peacefully, and quietly have, hold, use, occupy, possess and

enjoy the premises hereby leased for and during the term hereof, without any hindrance, eviction, molestation, or interruption of or by the LESSOR, or any person or persons. LESSOR covenants that no zoning or other ordinance, law, regulation, or restrictive covenants prevent the leased premises for the intended purpose. Should LESSOR not exercise its option to purchase the aforescribed real estate by December 1, 1977, this lease shall be null and void with no obligation to either party, but LESSOR agrees to notify the LESSEE in writing no later than December 15, 1977, in either eventuality.

COMMON  
AREAS

2 The premises marked as Unit #1, are to be located as approved by the parties as shown on the plot plan attached hereto as Exhibit A. LESSOR agrees that the use and occupancy by the LESSEE of the premises, shall include the use of the shopping center in common with others entitled thereto including its customers, suppliers, visitors and invitees of the common areas, employees' parking areas, service roads, loading facilities, sidewalks, and customers' parking areas, all as shown on Exhibit A, subject, however, to the terms and conditions hereinafter set forth, and all future facilities and common areas of the shopping center designed for common use, subject, however, to the terms and conditions hereinafter set forth. The LESSOR covenants and agrees that it shall maintain (hereinafter referred to as common area maintenance), the common areas of the shopping center in good operating condition and repair, adequately drained and reasonably free from rubbish and debris, any grass mowed, and the LESSOR shall, within a reasonably necessary period of time, stockpile or remove all snow and ice from the sidewalks, parking and driveway areas and cause all remaining surface ice to be treated with sand, salt or similar abrasive. The LESSOR shall resurface the sidewalk, parking and driveway areas when the

same shall be reasonably necessary together with the restriping of the parking areas. The LESSOR shall keep the common areas of the shopping center well lighted during such hours of darkness as LESSEE shall remain open for business and for a period of one (1) hour thereafter. LESSEE agrees to reimburse LESSOR for its share of said common area maintenance in accordance with the provisions of Paragraph 7F.

CONSTRUCTION

3. The LESSOR agrees to cause construction of the premises in accordance with the specifications attached or to be attached hereto as Exhibit B, and this lease shall not be effective until such specifications, including the plot plan as Exhibit A, have been so attached and initialed by both parties. The LESSOR agrees that prior to commencement of any construction that it shall provide LESSEE architectural and related engineering drawings, being properly stamped and sealed, for its review. LESSOR to provide water, sewer, gas, electrical and other utilities. LESSEE shall have the right to review the elevation drawing.

The LESSOR agrees that, at the option of either party, this lease shall become null and void if construction of Unit #1 of the shopping center, including the parking and common areas are not commenced on or before May 1, 1978 (but LESSOR shall notify LESSEE in writing on May 1, 1978, in either eventuality as to its commencement of construction or non-commencement of construction) and completed and ready for occupancy on or before May 1, 1978, and if the premises are not ready for occupancy on or before May 1, 1979, irrespective of cause, and irrespective of whether such cause is beyond the control of LESSOR, LESSEE, in its sole discretion is hereby granted the option to cancel and terminate this lease.

Construction of the premises shall not be considered complete until it is completed in every respect, including, but not limited to, toilet facilities, office space, vinyl floor covering, automatic pressure-pad doors, light fixtures, including tubes and globes, heating, refrigerated air conditioning, enclosed machine rooms, curtain walls and partitions, and electrical and plumbing requirements complete to the point of connection of fixtures, equipment, checkstands, and signs, interior and exterior decoration complete, and the parking areas, as delineated on Exhibit A, being completely surfaced, with adequate lighting and initial traffic control, service roads, sidewalks, loading facilities, all to be in accordance with specifications to be supplied by LESSEE LESSOR shall also construct and maintain a sign, to be reviewed by the LESSEE, identifying the shopping center during the term of this lease LESSOR covenants and agrees that neither it nor any other tenant in the shopping center shall construct a sign so as to impair the visibility of or access to the premises

LESSEE agrees to accept the premises in the condition existing on the date of the commencement of the term, subject to LESSEE'S punch list being completed, provided, however, that LESSOR covenants that if any defects therein become apparent at any time during this lease, and it shall appear that such defects existed at the beginning of the term thereof, or resulted from faulty construction, LESSOR shall cause the same to be repaired and corrected with all reasonable speed. LESSEE shall have the benefit of all warranties accruing to the LESSOR by reason of construction of the premises and the installation of equipment therein During construction authorized by LESSOR on the balance of the shopping center, LESSEE'S access to the premises and common areas outlined

on Exhibit A shall not be restricted or interfered with and such common areas shall be kept free of dirt, construction vehicles or other impairments at LESSOR'S expense

4. It is the intention of the parties and they agree, that this shall be a net-net lease with the LESSEE obligated, in addition to the payment of the rentals herein specified, to pay taxes and assessments, insurance premiums and the cost of repairs and maintenance of the premises in accordance with specific provisions governing the same as hereinafter set forth

TERM

5 The LESSOR agrees to, and does hereby, lease the premises to the LESSEE for an original term of twenty (20) years, commencing on the first day the premises is opened for business In no event shall the opening date for business be more than forty-five (45) days following the day when the construction of the premises is completed in accordance with the terms of this agreement and the premises are ready for occupancy by LESSEE, except for punch list items which can and will be completed within thirty (30) days, as aforesaid, and LESSOR notifies LESSEE of the foregoing The commencement date of the term shall be endorsed at the end hereof, and the lease term shall terminate at 11 59 P M on the last day of the twenty (20) year term thereafter

It is agreed that if at the end of the original term of this lease, or any option period hereof, LESSEE, in its sole discretion, shall deem it necessary to remain in occupancy of said premises beyond the termination date of the lease, LESSEE may do so for a period of time up to one hundred twenty (120) days For any such extension period, the rent will be one and one-half (1 5) times the base rent LESSEE shall give LESSOR sixty (60) days notice should such extension be necessary. It is agreed that the LESSEE shall not be obligated to

open the premises for business nor shall the rent for the premises commence until all streets and highways and parking areas, shown on Exhibit A attached hereto shall have been fully paved and open for public use

6 It is further agreed that, at the expiration of the original term, the LESSEE shall have the right, exercisable at its sole option, to extend this lease for three (3) additional terms of five (5) years each, upon the same terms and conditions. The LESSOR shall be notified of the LESSEE'S intent to exercise such option at least six (6) months prior to the end of the then current term. It is further agreed that LESSEE shall have the right, at its sole option, to extend this lease for an additional term not to exceed seven (7) years, if necessary, to permit reconstruction and repair of the premises after its damage or destruction, in accordance with the provisions of Paragraph 17 hereof

RENT

7 As rent for the premises, the LESSEE agrees to pay to the LESSOR at 525 South 13th Street, Lincoln, Nebraska, 68508, or at such other places as is mutually agreed upon, the following amounts

- A. A minimum monthly rental of Seven Thousand Two Hundred Ninety-One Dollars and Sixty-Seven Cents (\$7,291 67), or,
- B. An amount equal to 1 50% of all gross sales, as defined herein, made from the premises in any annual period, whichever is greater
- C. Taxes and assessments levied and assessed against the premises as provided in Paragraph 9 hereof
- D. Public liability insurance and property damage insurance against the premises as provided in Paragraph 10 hereof
- E. Maintenance and repairs against the premises as provided in Paragraph 14 hereof
- F. LESSEE'S proportionate share of the cost of common area maintenance and repairs as defined under Paragraph 2 and in accordance with the specific provisions of Paragraph 14 hereof

G. Fire and extended coverage insurance against the premises as provided in Paragraph 17 hereof

H Merchants Association dues in accordance with the provisions of Paragraph 32 hereof

GROSS  
SALES

The term "gross sales", as used herein, shall include all sales of merchandise from, through, or off the premises, including the performance of any service for any customer or patron for compensation by the LESSEE or employee, and shall include all sales by every department thereof, for cash or on a charge basis, and including all business in which orders come by mail, telephone, or telegraph, less credit for returned merchandise, merchandise trade-ins, and credits of a similar nature "Gross sales" shall not include sales, luxury, excise or other taxes collected by LESSEE from customers and charged separately, merchandise transfers from one of the LESSEE'S or a SUBLESSEE'S stores to another, return of merchandise to a supplier, wholesale bakery or wholesale delicatessen sales, or sales of money orders or vending machine receipts except to the extent of royalties actually received by LESSEE

LESSOR shall have the right, at any time, but no more than once a year, and from time to time, at LESSOR'S expense, to have audits made of the records of sales which occur on the premises. LESSOR'S right to examine the books and records pertaining to the operation of a business on the premises, or to make an audit thereof in respect to any lease year, shall be limited to the then current lease year, plus the year immediately preceding LESSEE'S statements for other prior lease periods shall be deemed to have been accepted by LESSOR and be incontestible

TIME OF  
PAYMENT

The rent for each full calendar month, running from the first day of that month to the last day of that month, shall



be paid on or before the tenth (10th) day of the following month.

If the commencement date of the term of this lease shall be other than the first day of a calendar month, the rent for such partial month shall be calculated and paid on a proportionate basis, so that thereafter rent may be calculated and paid for even calendar months.

Payment of any additional rental, as outlined in Paragraph 7B herein, shall be paid on or before the tenth (10th) day of the month following the ending of each annual period.

8. All mortgage payments or other charges required to discharge any lien or encumbrance that may affect the premises, and for which the LESSOR is solely responsible, and which is superior and prior to the terms of this lease, and the rights of LESSEE hereunder, shall be paid by the LESSOR as the same shall become due; provided that LESSOR shall not be in breach of this provision if LESSEE is not evicted by a mortgagee or lienholder or its quiet enjoyment or possession is not affected and this provision shall not be interpreted to make LESSOR liable to pay any "non-personal liability" note or obligation

#### TAXES

9. As additional rental, the LESSEE agrees to pay to the LESSOR, on demand, its prorata share of the amount of all taxes and assessments levied and assessed against the premises and the common areas delineated on Exhibit A that shall become due and payable during the original or any renewed term hereof. LESSEE shall be liable for only such proportionate share of such taxes and assessments as the number of square feet of floor space in the premises bears to the total number of square feet of rentable floor space in the shopping center

Should taxes and assessments increase against the premises as a result of LESSOR'S future development or construction of additional improvements on the balance of the real estate of the shopping center on Exhibit A, then, and in such event LESSOR agrees it will use LESSEE'S share of the previous last paid tax statement covering the real estate, and improvements located thereon on Exhibit A and which is prior to the initial tax assessments of the balance of the real estate and improvements in the shopping center as the base year from which LESSEE'S proportionate share of any such increase shall be calculated

Such taxes and assessments must be billed by LESSOR to LESSEE no later than one hundred eighty (180) days after receipt of notice from the local taxing authority to LESSOR. LESSOR shall be required to send LESSEE re-  
ceipted tax bill showing payment for taxes as well as special assessments together with a statement setting forth and clearly showing the computations of LESSEE'S proportionate share of taxes and assessments due and payable. If such notice is not received by LESSEE within one hundred eighty (180) days, LESSEE'S obligation to pay such taxes and assessments will be considered to be null and void. Provided, however, that for any partial tax year occurring during the original or any renewed term hereof, the LESSEE shall be liable for only that proportion of such taxes and assessments as the number of days in such partial tax year bears to 365

Any taxes and assessments levied and assessed against the premises that shall become due and payable during the term hereof and which LESSEE has agreed to pay, may be contested by LESSEE, by appropriate proceedings, in LESSOR'S or LESSEE'S name and LESSOR will offer no objections, will cooperate with LESSEE, will provide any information requested by LESSEE, and will execute any document which may be necessary and proper for such proceeding Any refund shall be the property of LESSEE to the extent it is based upon the payment made by LESSEE of any assessments LESSOR and LESSEE shall share equally in any legal cost of such contest

If the leased premises are part of a shopping center or constitute part of a tract which is assessed as a whole, then LESSEE may at its option contest any such tax assessment, and any refunds shall be the property of LESSEE to the extent it is based upon the payment of a prorata share of an assessment made by LESSEE In the event LESSOR shall contest any taxes or assessments, LESSEE shall be immediately notified in writing

The LESSEE shall also pay all taxes levied and assessed upon property belonging to it and located upon the premises

10 The LESSEE agrees to protect and save the LESSOR harmless from any and all claims of others for injuries to persons or property arising out of the occupancy or operation of the premises by the LESSEE and its sublessees, except such claims as arise out of negligent, intentional or willful acts of the LESSOR

PUBLIC  
LIABI-  
LITY

LESSEE agrees to maintain, at its own expense, during the full term of this lease, a policy of public liability and property damage insurance in a reputable company authorized to do business in the State of Nebraska, in which policy LESSOR and LESSEE shall be named as co-insureds, and to furnish current

certificates evidencing the existence of such insurance Such policy shall provide coverage in an amount not less than \$1,000,000 00 single limit combined bodily injury and property damage each occurrence, to cover all situations where any other person or persons claim personal injury, or property damage in or upon the premises

LESSOR covenants and agrees to maintain, at its own expense, during the full term of this lease, a policy of public liability and property damage insurance in a reputable company authorized to do business in the State of Nebraska, in which policy LESSOR and LESSEE shall be named as co-insureds, insuring against any liability arising on or about the common areas within the shopping center and to furnish current certificates evidencing the existence of such insurance Such policy shall provide the coverage in an amount not less than \$1,000,000 00 single limit combined bodily injury and property damage each occurrence, to cover all situations where any other person or persons claim personal injury, death, or property damage in or upon the common areas

The LESSOR agrees to protect and save the LESSEE harmless from any and all claims of others for injuries to persons or property arising out of the use or operation of the common areas within the shopping center, including reasonable attorney's fees, except such claims as arise out of negligent, intentional or willful acts of the LESSEE, its agents or employees

11 LESSOR and LESSEE each hereby releases the other, and their respective employees, agents, and every person claiming by, through, or under either of them, and LESSEE hereby releases each other tenant in the shopping center of which the premises are a part, and the employees and agents thereof, from any and all liability or responsibility (to the

WAIVER  
OF  
LIABI-  
LITY

other or anyone claiming by, through, or under them by way of subrogation or otherwise) for any loss or damage to any property (real or personal) caused by fire or any other insured peril covered by any insurance policies for the benefit of any party, even if such loss or damage shall have been caused by the fault or negligence of an other party, their employees or agents or such other tenant or any employee or agent thereof LESSOR agrees that it will obtain an agreement from each such other tenant releasing all claims which such tenant may have against LESSEE, its employees and agents, for damages to any property (real or personal) owned by such tenant and covered by insurance, even if such loss or damage shall have been caused by the fault or negligence of LESSEE, its employees or agents LESSOR agrees, upon request of LESSEE, to furnish evidence of such waiver of liability to LESSEE All policies of insurance written to insure such buildings, improvements, and contents shall contain a proper provision, by endorsement or otherwise, whereby the insurance carriers issuing the same shall acknowledge that the insured has so waived and released its right of recovery against the other party hereto and shall waive the right of subrogation which such carrier might otherwise have had against such other party, all without impairment or invalidation of such insurance The provisions of this paragraph shall be equally binding upon and inure to the benefit of any assignee or sublessee of LESSEE

REMOVAL

12 The LESSEE shall have the right to remove any and all furniture, fixtures, and equipment it may have installed on or in the premises provided the LESSEE shall restore any damage to the building as the result of such removal, usual wear and tear excepted

ENTRY

13 The LESSOR shall have the right to enter the premises at any reasonable time for the purpose of inspecting the same,

or for the purpose of doing anything that may be required under this lease, or for the purpose of doing anything LESSEE may be required to do and shall fail to do In the event it is reasonably necessary for the LESSOR to make any repairs to the premises that the LESSEE is responsible for, but which the LESSEE has failed to make, LESSEE shall reimburse the LESSOR for the cost thereof on demand, and the LESSOR shall not be responsible to the LESSEE for any loss or damage that the LESSEE may suffer from such repairs, provided that such loss or damage is reasonable under the circumstances

MAINTENANCE  
AND  
REPAIR

14 Except for the LESSOR'S obligations with respect to latent defects as set forth in Paragraph 3 and with the obligations to maintain in good condition the structural portions of the building including foundation, slabs, and roof, and electrical and plumbing services to the building, LESSEE agrees at its expense to maintain all other portions of the premises and to make all repairs ordinary as well as extraordinary in and about the premises necessary to preserve them in good order and condition, including the air conditioning and heating equipment, after expiration of the warranty period so stated in the specifications as attached or to be attached hereto as Exhibit B The LESSOR shall have no obligations with respect to such repairs and maintenance

LESSEE further agrees that it shall also be obligated to pay its proportionate share of the cost of repair and maintenance of the common area maintenance as provided in Paragraph 2 and Paragraph 7F hereof Such share shall be paid in quarterly installments not to exceed one-fourth of the annual sum equivalent to twenty cents (20¢) per square foot of total building area occupied by the LESSEE The LESSOR agrees to provide LESSEE with each quarterly statement the

necessary documentation setting forth LESSEE'S proportionate share of the aforesaid cost and showing clearly the computation of such cost. It is understood and agreed that said proportionate share to be paid by the LESSEE shall be computed in accordance with the relation of the square foot area of the premises hereby demised to the LESSEE as compared to the total square foot area of all buildings in the shopping center. It is further understood and agreed between the parties that until completion of construction of the balance of the addition of buildings outside of the common areas delineated in red, that the parking and common areas upon which common area maintenance charges are payable shall only be those areas delineated in red and on which the LESSEE shall pay its pro-rata share with other tenants to be located within said delineated area, provided, however, that said costs shall not exceed the sum hereinabove set forth. Should the annual common area maintenance charges exceed twenty cents (20¢) per square foot of total building area occupied by LESSEE, then LESSOR agrees to provide LESSEE a further statement and explanation of all reasonable and warranted excess common area maintenance charges exceeding twenty cents (20¢) per square foot and should said statement and explanation by LESSOR be unreasonable and non-warranted, then LESSEE shall not be required to pay said charges exceeding twenty cents (20¢) per square foot, otherwise, LESSEE shall pay such charges.

LESSOR is to be reimbursed only for the actual cost incurred for the maintenance and repair (except latent defects) of the common areas. Said costs are not to include any management fee or profit for the LESSOR or any of its associated or affiliated companies, relatives or related party. LESSEE shall have the right to audit LESSOR'S books and records and LESSOR shall be obligated to maintain adequate

books and records to establish the actual costs of maintaining or repairing the common areas

WASTE

15 The LESSEE shall not commit waste or permit waste to be committed in or upon the leased premises and, at the termination of this lease, shall surrender and deliver the premises to the LESSOR in as good condition as the same were at the commencement of the term excepting (1) usual wear and tear, (2) acts of God and unavoidable casualties, (3) repair of latent defects for which LESSOR is responsible hereunder, (4) damage or loss for which LESSOR has waived recovery under Paragraph 11 hereof, and (5) other causes beyond the control of LESSEE

16 LESSOR shall have the sole right to approve the design and placement of any and all signs of any nature upon the exterior premises, provided, however, that such approval shall not be unreasonably withheld and, further that the size and advertising effect of any sign to be used by the LESSEE shall be substantially equal to any sign permitted to be used by other tenants in the shopping center

DAMAGE OR  
DESTRUCTION

17. The LESSEE agrees to keep in effect, at its expense, and during the original or any renewed term of this lease, a policy of fire and extended coverage insurance, covering the premises, written by a responsible insurance company authorized to do business within the state where the premises are located, in an amount equal to not less than ninety percent (90%) of the replacement cost of the premises, and to furnish the LESSOR proof thereof Such policy of insurance shall provide protection against the losses so insured against for the benefit of the LESSOR, LESSEE, and any mortgagee as their interests may appear under the terms of this lease and any mortgage agreement, and shall contain the provision or endorsement required by Paragraph 11 hereof



The insurance to be provided by LESSEE may be provided pursuant to a blanket insurance policy covering the premises and other locations of LESSEE provided, however, in no event shall the protection afforded by such blanket insurance policy be less than that required hereunder.

Premises to be constructed by LESSOR under this lease is to be equipped with an automatic sprinkler system which is more fully described in specifications of the LESSEE per Exhibit B LESSOR requires its LESSEE as hereinabove provided to carry fire and extended coverage insurance. LESSOR further understands that LESSEE'S sublessee is required to carry fire and extended coverage insurance covering all of its merchandise, furniture, fixtures, and equipment located in and upon the premises Should the building covered by this lease not qualify for sprinkler credit by any insurance company of LESSEE'S and/or LESSEE'S sublessee, then LESSOR shall reimburse LESSEE and LESSEE'S sublessee the differential amount between the premium paid and that which would have been paid had the full sprinkler credit been applied. Said difference shall be computed and paid annually using the then published insurance rates until the defects are cured by LESSOR.

If, at any time during the original or any renewed term hereof, the premises shall be partially damaged by fire, wind-storm, or other casualty, but the extent thereof is not sufficient to deprive the LESSEE of more than twenty-five percent (25%) of the floor space in the premises, then LESSEE shall notify LESSOR thereof in writing and LESSOR, at its expense, shall proceed promptly to rebuild and repair such portion of the premises so damaged or destroyed, and this lease shall continue in full force and effect

If, at any time during the original or any renewed term hereof, the premises shall be partially or wholly damaged by such a casualty, and the extent of such damage shall be sufficient to deprive LESSEE of more than twenty-five percent (25%) of the floor space therein for its purposes, the LESSEE shall notify LESSOR thereof in writing and the rights and obligations of the parties shall be governed by the following

- A. If such damage shall occur during the first thirteen ( 13 ) years of the original term hereof, then at its expense, the LESSOR shall proceed to rebuild and repair such damage, and this lease shall continue in full force and effect
- B If such damage shall occur during the last seven (7) years of the original term hereof, or during either of the renewal terms available to LESSEE at its option under Paragraph 6, and if within thirty (30) days after the incurrence of such damage, LESSEE shall further notify LESSOR of LESSEE'S intent to exercise options, then still available to it under Paragraph 6, to extend the term hereof for a period of at least seven (7) years following such notification, then LESSOR, at its expense, shall proceed promptly to rebuild and repair such damage, and this lease shall continue in full force and effect. If notice be not so given to LESSOR of LESSEE'S intent to exercise such options to so renew the term hereof for such a period of at least seven ( 7 ) years, then LESSOR, at its sole option, may elect to rebuild and repair such damage at its expense, by written notice to LESSEE within thirty (30) days after the expiration of the thirty (30) day period, during which LESSEE may give LESSOR

notice of election to renew the term hereof, upon the happening of which LESSOR shall so proceed to build and repair such damage, and this lease shall continue in full force and effect. If LESSEE shall fail to so give LESSOR notice of LESSEE'S intent to exercise such option to so renew the term hereof, and LESSOR shall thereafter fail to so give LESSEE notice of LESSOR'S election to rebuild and repair such damage, then this lease shall terminate as of the date of the occurrence of such damage, the rental shall be adjusted accordingly, and neither party shall have further rights or obligations hereunder

LESSOR agrees that in the event any building or buildings in the shopping center other than the building containing the demised premises, shall be destroyed or damaged by fire or other hazard, during the term of this lease, or any renewal thereof, except during the last seven ( 7 ) years of the then current term, LESSOR shall reconstruct and restore said buildings as closely as possible to those building or buildings shown on Exhibit A attached hereto

Whenever, under the foregoing provisions of this Paragraph 17, LESSOR shall have the obligation to reconstruct all or any portion of the premises, other building or buildings and so to continue this lease in full force and effect, the same shall be commenced within thirty (30) days after LESSOR'S obligation so to do becomes fixed by receipt of notice of such damage, or receipt of notice of LESSEE'S intent to exercise the necessary option to renew, or the exercise of LESSOR'S election to rebuild, as the case may be LESSOR shall prosecute such reconstruction diligently and to the end that the premises, other

building or buildings will be restored to substantially the same condition as before the occurrence of such damage. If, for any reason whatsoever, such reconstruction is not completed within six (6) months after receipt of the applicable notices, unless LESSOR be prevented from completing such reconstruction by causes or conditions beyond its control, then, and in either of such events, LESSEE may, at its sole option, terminate this lease by written notice to LESSOR of its intention to do so, upon the happening of which, rental shall be adjusted as of the date of termination, LESSEE shall have no further rights hereunder, and LESSEE shall have no further interest in the proceeds of said insurance.

Whenever, under the foregoing provisions of this Paragraph 17, LESSOR shall have the obligation to reconstruct all or any portion of the premises, other building or buildings, and so to continue this lease in full force and effect, the rentals payable by LESSEE hereunder shall abate from the date of the occurrence of such damage to the date of completion of such reconstruction in proportion to LESSEE'S deprivation of use of the premises for its purposes.

Whenever, under the foregoing provisions of this Paragraph 17, the premises shall not be reconstructed or this lease shall be terminated by reason of the exercise or non-exercise of any option herein granted to either the LESSOR or the LESSEE, the LESSEE shall have no further interest in the proceeds of such insurance.

CONDEMNATION

18. Upon LESSOR'S receipt of notice from any condemning authority of a proposed condemnation, LESSOR shall immediately notify LESSEE in writing. If all of the premises shall be taken under the right of eminent domain by any authority having the right of condemnation, or if a portion of the shopping center is so condemned as will prevent the practical use of the

premises for LESSEE's purposes, this lease, and all obligations hereunder, shall terminate on the date title vests pursuant to such proceedings. In the event the proper judicial authority does not divide the award to compensate the separate loss of each party, the total award made in such proceedings shall be equitably distributed between the LESSOR and LESSEE, and if applicable, other tenants occupying space in the shopping center. If such taking does not prevent the practical use of the premises for the purposes of the LESSEE, then this lease shall continue in full force and effect, but the rent shall abate proportionately, and such other adjustments shall be made as shall be just and equitable.

In any instance in this Agreement in which it is provided that a question shall be determined by arbitration, the following procedure shall govern.

The party desiring arbitration ("First Party") shall give written notice to that effect to the other party ("Second Party"), specifying in said notice the name and address of the person designated to act as arbitrator on its behalf. Within fifteen (15) days after the service of such notice, the Second Party shall give written notice to the First Party specifying the name and address of the person designated to act as arbitrator on its behalf. If the Second Party fails to notify the First Party of the appointment of its arbitrator, as aforesaid, within or by the time above specified, then the appointment of the second arbitrator shall be made in the same manner as is hereinafter provided for the appointment of a third arbitrator in a case where the two arbitrators are appointed hereunder and the parties are unable to agree upon such third appointment. The arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed, and if, within thirty (30)

days after the second arbitrator is appointed, the said two arbitrators shall not agree upon the question in dispute, they shall themselves appoint a third arbitrator who shall be a competent and impartial person, and in the event of their being unable to agree upon such appointment within ten (10) days after the time aforesaid, the third arbitrator shall be selected by the parties themselves if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request such appointment by the Presiding Judge of the U S District Court for the Federal District in which the premises are located. In the event of the failure, refusal, or inability of any arbitrator to act, a new arbitrator shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of such arbitrator so failing, refusing or unable to act. The decision of the arbitrators so chosen shall be given within a period of thirty (30) days after the appointment of such third arbitrator. The decision in which any two arbitrators so appointed and acting hereunder concur shall in all cases be binding and conclusive upon the parties. Each party shall pay the fees and expenses of the one of the two original arbitrators appointed by such party, or in whose stead as above provided, such arbitrator was appointed, and the fees and expenses of the third arbitrator and all other expenses, if any, shall be borne equally by both parties.

SUBLET  
OR  
ASSIGN

19 The LESSEE shall have the right, during the term of this lease, to sublet all or a portion of the premises, or to assign this lease, either in whole or in part, but no such subletting or assignment shall release the LESSEE from any of the obligations under the terms of this lease, and the

LESSOR shall, at all times, have the right to look to the LESSEE for the performance of all of the covenants to be performed on the part of the LESSEE. Should the LESSEE elect to permanently close the premises or intend to sublease the premises for purposes other than a food store operation, LESSEE agrees to provide to LESSOR written notice of its intention and LESSOR covenants within thirty (30) days of receipt of LESSEE'S written notice to advise LESSEE in writing of LESSOR'S approval or disapproval. Should the LESSOR disapprove, then LESSOR may, provided LESSOR receives the consent of LESSOR'S mortgagee, either cancel this lease in its entirety or become the assignee fully accepting all of LESSEE'S obligations under the lease, in which case LESSEE shall be released by LESSOR from all liability on its obligations of this lease.

HOLDING  
OVER

20. If LESSEE remains in possession of the premises after the expiration of this lease, and without the execution of a new lease, except as defined in Paragraph 5, it shall be deemed to be occupying the premises as a tenant from month-to-month, subject to all the conditions, provisions, and obligations of this lease insofar as the same are applicable to a month-to-month tenancy.

SHOWING  
BY  
LESSOR

21. LESSOR may, at any time within six (6) months before the expiration of this lease, enter the premises at all reasonable hours for the purpose of offering the premises for rent, subject to LESSEE'S rights, as set out in Paragraph 6 hereof.

RELATION-  
SHIP

22. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relation of principal and agent or of partnership or of joint venture between the parties hereto. It is understood and agreed that neither method of computation of rent, nor any

other provision contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of LESSOR and LESSEE

PARKING  
AREA

23 LESSOR agrees that at no time during the term of this lease, will the customer parking area entrances and exits and service area adjoining the premises be reduced in size or configuration from that shown on the plot plan attached as Exhibit A nor shall the shopping center customers parking area be less than three times as large as the total square footage space areas of the buildings in said shopping center, unless such reduction is made necessary by the exercise of eminent domain by proper and duly constituted authority or authorities, or is done at LESSEE'S request, or results from the exercise of any right granted LESSEE herein Any violation of this provision shall entitle the LESSEE either to treat such violation as a default with an option to cancel the lease or to require a proportionate reduction of rent, at LESSEE'S sole option.

UTILITIES

24. LESSEE agrees to pay all electric current, water, gas, and other fuel bills, as determined by separate meters for LESSEE'S space and use

LESSEE  
DEFAULT

25. The LESSEE further covenants with the LESSOR that if the rent or any part thereof is not paid when it becomes due, or if LESSEE shall violate or neglect any covenant, agreement, or stipulation herein contained on its part to be kept, performed, or observed, and any such default shall continue for thirty (30) days after written notice of such default shall have been mailed to LESSEE specifying such default and LESSEE does not cure said default or if said default is of such a nature that it cannot reasonably be cured within said thirty (30) day period, and LESSEE has not



proceeded with reasonable diligence and good faith to complete the curing thereof, then, in addition to the other remedies or courses of action now or hereafter provided by law, LESSOR may, at its option, cancel and annul this lease, and thereafter, may enter and take possession of the premises immediately and may remove all persons, furniture, fixtures, and equipment from the premises, at LESSEE'S expense, in order to recover at once, full and exclusive possession of the premises, and such entry shall not operate as a waiver or satisfaction, in whole or in part, of any claim or demand arising out of, or connected with, any breach or violation by the LESSEE of any covenant or agreement on its part to be performed, but this provision shall not be applicable to a bona fide dispute as to the LESSEE'S liability, if any, to make repairs.

LESSOR  
DEFAULT

26. The LESSOR further covenants with the LESSEE that if LESSOR shall violate or neglect any covenant, agreement, or stipulation herein contained on its part to be kept, performed or observed, and any such default shall continue for thirty (30) days after written notice thereof is given by LESSEE to LESSOR, then, and in addition to the other remedies or courses of action now or hereafter provided by law, LESSEE may, at its option, among other things, cancel and annul this lease, or remedy the condition or need referred to in such notice, or make the payment which LESSOR has not made, but should have made, or remedy the condition or need referred to in such notice and deduct LESSEE'S actual cost or the amount of the payment, thereof from subsequent installments of rent, which actual cost is hereby agreed by the parties in advance to be reasonable and proper costs and deductions. In the event of any dispute between the parties as to the right of LESSEE to such deduction, LESSOR further covenants and agrees that it will not give LESSOR any notice of default or termi-

nation of this lease unless LESSEE shall fail to pay to LESSOR the amount of any such deduction within ten (10) days after receipt of notice by LESSEE of a final and unappealable judgment with respect thereto in favor of LESSOR or after receipt of notice of an arbitration decision made pursuant to the terms and provided for under Paragraph 18 hereof LESSEE agrees that in the event of default by the LESSOR hereunder, LESSEE will, prior to terminating said lease or exercising any other remedies available to it hereunder or at law, provide the first mortgagee or any subsequent holder of the first mortgage written notice of such default(s) and such mortgagee shall have the same rights as LESSOR to cure such default(s), provided, said mortgagee shall have previous to such LESSOR default, provided LESSEE with written notice of the existence of such mortgage, specifying the name and address of such mortgagee

LEASE  
APPLIES  
ONLY TO  
BUSINESS  
ON PRE-  
MISES

27 It is understood that LESSEE is presently involved in numerous other activities at other locations In this respect, it is not intended that the gross sales and other provisions of this lease shall apply to the business activities of LESSEE or of any assignee or sublessee of LESSEE at other locations, but shall apply only to the business conducted on the premises, whether conducted thereon by LESSEE or by an assignee or sublessee of LESSEE, it being fully understood that the foregoing provisions are not intended to modify in any manner the responsibilities or obligations of LESSEE pursuant to Paragraph 19 of this lease

INSURANCE  
MAY BE  
PROVIDED  
BY SUB-  
LESSEE OR  
ASSIGNEE

28. It is further understood that LESSEE at all times shall maintain insurance coverage it is required to carry hereunder for the benefit of LESSOR with a provision in such insurance that there will be no cancellations without at least ten (10) days written notice to LESSOR Provided, however,

that LESSEE may satisfy this insurance requirement through the maintenance of such insurance coverage for the benefit of LESSOR, as required in Paragraph 10 above, by LESSEE or by an assignee or sublessee of LESSEE

29 Excepting only restaurant(s), health food store, candy store, and ice cream store, the LESSOR covenants that it will not permit any person other than the LESSEE to operate a retail food store of any nature in the shopping center of which the premises are a part or on any adjoining property owned by the LESSEE, his assignees, or his transferees, without first obtaining the LESSEE'S prior written consent

ALTERATIONS OR  
ADDITIONS

30 The LESSOR shall have the right to make interior alterations or interior additions to the premises, provided such interior alterations or interior additions are at its sole cost and expense, and that such interior alterations or interior additions shall be of good workmanship and material at least equal to that of the original construction and that such interior alterations or interior additions neither shall reduce the size and strength of the existing building, nor adversely affect the market value of the premises, provided, however, that no such interior alterations or interior additions to the premises which shall cost more than Fifty Thousand Dollars (\$50,000 00) shall be made by the LESSEE without the written consent of the LESSOR. The LESSEE shall not be required to remove any such interior alterations or interior additions or to restore the building to its original condition at the termination of this lease

MERCHANTS'  
ASSOCIATION

31 The LESSOR agrees to cause the organization of a Merchants' Association and to require the continuing membership and participation of tenants (including the payment of their prorata share) occupying at least seventy-five percent (75%) of the total square footage of the buildings in the shopping

center In consideration of the acceptance of other tenants occupying seventy-five percent (75%) of the square footage of the buildings in the shopping center of a similar provision, the LESSEE agrees to participate in such association and to pay into such association its prorata share of all reasonable costs of the activities of the association as hereinafter defined, such share to be measured by the proportion that the ground floor square footage occupied by the LESSEE bears to the total square footage of building in the shopping center; provided, that such amount to be paid by LESSEE shall not exceed the sum of \$3,750 00 per year paid as prescribed by the Merchants' Association membership The by-laws of the association shall provide that all tenants of the shopping center, including the LESSEE, shall have one vote per square foot of total building area occupied by each

It is agreed that the activities of the Merchants' Association shall consist of the designation of employee parking areas and the methods of enforcement thereof, and the selection and participation in various means of continuing promotion of the entire shopping center.

The LESSEE and its employees shall park their cars in the areas as designated by LESSOR from time to time Failure of the LESSEE and its employees to park cars in such designated areas shall be grounds for towing away the parked car at the expense of the owner, or use of means recommended by the Merchants' Association The LESSEE agrees that, upon written notice from the LESSOR, it will, within five (5) days, furnish the state automobile license numbers assigned to its cars and the cars of all its employees

LESSOR agrees to contribute to the Merchants' Association at least \$3,750 00 per lease year

ADDITIONAL SPACE

32 It is contemplated that, during the term of this lease, the LESSEE may require additional rental space in excess of that included in this lease. It is agreed that LESSEE may, at any time within the first six (6) years of the term of this lease, request LESSOR to construct, at LESSOR'S expense, additional rental space, not exceeding 10,000 square feet, to be leased to LESSEE on mutually agreeable terms, conditions, and rentals, as provided herein, and thereupon, LESSOR shall construct such additional space. LESSOR further agrees that, in the event rental space in an adjoining building, if any, becomes available for occupancy during the term of this lease or any extension hereof, LESSOR will in writing so notify LESSEE and within thirty (30) days of receipt of such notice from LESSOR, LESSEE will notify in writing LESSOR of its desire to occupy such space and of its intent to negotiate with LESSOR for such occupancy, which negotiation LESSOR agrees in good faith to enter into.

SHOPPING CENTER  
OCCUPANCY

33 LESSOR further covenants that it will simultaneously with construction of the leased premises, construct a retail drug store containing approximately 19,000 square feet as delineated on the plot plan attached hereto as Exhibit A being located in the shopping center, completion of same to be simultaneously with or previous to completion of construction of the premises to be occupied by LESSEE.

If LESSOR shall fail to construct such other retail drug store, or if such building shall fail to be occupied within thirty (30) days of LESSEE'S occupancy under this lease, then at the sole option of the LESSEE this Build and Lease Agreement may be declared null and void. LESSOR agrees that it shall construct, during the term of this lease, or that it shall cause to be constructed a restaurant containing approximately 5,800 square feet, a three story building containing at least 18,000 square feet, an enclosed

mall containing retail shops of approximately 96,000 to 100,000 square feet and a tire store of approximately 4,230 square feet, all as delineated and within the space as depicted on Exhibit A attached hereto and made a part hereof LESSOR agrees, on the property of which the premises are a part, that the LESSOR now controls or on contiguous or adjacent property the LESSOR may at some later date control, that there will not be located on the described real estate of which the premises are a part, a theatre, bowling alley, restaurant, or skating rink within three hundred (300) feet of LESSEE'S premises, except that restaurants may be located in any part of the enclosed mall shown on Exhibit "A", further there will be no offices, training or educational facilities within two hundred (200) feet of the leased premises

RIGHT TO CLOSE STORE

34 LESSOR agrees that nothing in this lease shall be construed as compelling LESSEE to operate any particular type of business or to keep the store in or upon the premises open for business, but LESSEE shall have the privilege of closing said store at any time, provided LESSEE shall continue to pay the minimum monthly rental as set forth in this lease Provided, in the event such store is closed, subject to the particulars as set forth in Paragraph 19, LESSOR shall have the right to relet in order to obtain a substitute tenant, in which event the LESSEE shall be relieved of all further liability under this lease and this lease shall be terminated

LESSOR'S WAIVER

35 LESSOR agrees that none of the property, including food, supplies, merchandise, inventory, furniture, fixtures, machinery, equipment, cash, or any proceeds therefrom that are placed upon or permitted to be upon the premises by LESSEE, or any of LESSEE'S sub-tenants, assigns, or successors, during the term of this lease or any renewal thereof, shall be subject to or liable to levy or distress or any legal process

whatsoever for the collection of rent of said premises In the event there is a mortgage on the premises, the LESSOR shall obtain the same waiver from the mortgagee

NOTICES

36. Any notice required or desired to be given to either party shall be in writing and be sent by registered mail, postage prepaid Any such notice to the LESSOR shall be addressed to it at 525 South 13th Street, Lincoln, Nebraska, 68508 Any such notice to the LESSEE shall be addressed to it at P O Box 1160, Topeka, Kansas, 66601 The address of either party may be changed by written notice thereof to the other party

CAPTIONS

37 Any headings preceding the text of the several paragraphs and sub-paragraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this lease, nor shall they affect its meaning, construction or effect

ADVANCE  
POSSES-  
SION FOR  
FIXTURES

38 LESSEE shall have the privilege rent free of entering the premises for the purpose of installing its store and trade fixtures, storing its first items of equipment and otherwise preparing the premises for LESSEE'S occupancy prior to the rent commencement date, provided, however, and only upon LESSOR'S specific request and demand, LESSEE shall vacate the premises should interference occur between LESSOR'S and LESSEE'S contractors, subcontractors and workmen

SUBORDI-  
NATION

39 LESSEE agrees that this lease shall be subordinate to any mortgages that may hereafter be placed upon the premises and to all renewals and extensions thereof, provided that the mortgagee named in such mortgages shall agree to recognize this lease in the event of foreclosure if the LESSEE is not then in default

40 This agreement shall be binding upon, and shall inure to the benefit of the parties hereto, their heirs,

executors, administrators, successors and assigns.

WITNESS the hands of the parties the date first above written.

LESSOR -

EAST PARK PLAZA, INC.

(SEAL)

ATTEST.

                      
Secretary

By

                      
President

LESSEE -

FLEMING COMPANIES, INC.

(SEAL)

ATTEST

                      
Assistant Secretary

By

                      
Vice President

The commencement date of this lease, as provided in Paragraph 5, Page 6 hereof, is agreed to be the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

LESSOR -

EAST PARK PLAZA, INC

(SEAL)

ATTEST:

                      
Secretary

By

                      
President

LESSEE -

FLEMING COMPANIES, INC

(SEAL)

ATTEST.

                      
Assistant Secretary

By

                      
Vice President

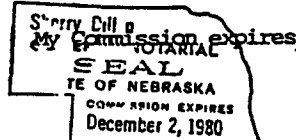


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

On this 19th day of October, 1977, before me, the undersigned, a Notary Public in and for said County, personally appeared David D Tews, President of EAST PARK PLAZA, INC , to me personally known to be the President and the identical person whose name is affixed to the above instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of the said EAST PARK PLAZA, INC , and that the corporate seal of the said EAST PARK PLAZA, INC was thereto affixed by its authority.

WITNESS my hand and notarial seal the day and year last above written

Sherry J. Jilman  
Notary Public



STATE OF KANSAS )  
 ) ss.  
COUNTY OF SHAWNEE )

BE IT REMEMBERED, that on this 11 day of November, A D. 1977, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came D. H. Katsenbach, Vice President of FLEMING COMPANIES, INC., a corporation duly organized, incorporated, and existing under and by virtue of the laws of Kansas, and Robert W. Smith, Assistant Secretary of said corporation, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

GLORIA BROADBOKS  
STAT NOTARY PUBLIC  
Shawnee County Kansas  
My Commission Expires

My Commission expires 10-15-78

Gloria Broadboks  
Notary Public

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE made as of the 26<sup>th</sup> day of July, 1979, between EAST PARK PLAZA, INC , a Nebraska corporation, hereinafter called "Lessor," and Fleming Companies, Inc, a corporation, hereinafter called "lessee "

W I T N E S S E T H

WHEREAS, Lessor and Lessee entered into a lease dated November 11, 1977 (the "lease") for certain premises in Lincoln, Nebraska, which premises are more fully described in the Lease, and

WHEREAS, Lessor and Lessee desire to amend the Lease,

NOW THEREFORE, in consideration of the mutual covenants herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to amend the Lease as follows

1. Section 3, page 4 of the lease shall be amended as follows
  - (a) Line 4 of the second paragraph -- "May 1, 1978" shall be changed to May 1, 1979 "
  - (b) Line 5 of the second paragraph -- "May 1, 1978" shall be changed to "May 1, 1979 "
  - (c) Line 8 of the second paragraph -- "May 1, 1978" shall be changed to "November 1, 1979 "
  - (d) Line 9 of the second paragraph -- "May 1, 1979" shall be changed to "November 30, 1979 "

IN WITNESS WHEREOF, Lessor and Lessee have hereby set their hands and seals as of the day and year first above written

LESSOR  
EAST PARK PLAZA, INC

LESSEE

By Scott Z. Wiegant  
V-President

By William E. Neelman  
VICE President

Attest Thomas R. Smirley  
As Secretary

Attest Robert W. Smith  
As Secretary

AMENDMENT  
TO LEASE BETWEEN  
EAST PARK PLAZA, INC , LESSOR  
and  
FLEMING COMPANIES, INC , LESSEE

For One Dollar (\$1 00) and other valuable consideration in hand exchanged between the parties hereto, the undersigned parties hereby amend that certain lease between them, dated November 11, 1977, as follows

- 1 Paragraph 23, page 24, line 2 -- After "exits" add "so as to materially affect the flow of traffic, provided that Lessor first receives written consent of Lessee, which consent shall not be unreasonably withheld "
- 2 Paragraph 23, page 24, Line 15 -- After "option " insert "Provided, however, that Lessee shall give the first mortgagee written notice of any such default and thirty (30) days after such notice to cure such default "
- 3 Paragraph 29, page 27, line 6 -- Change "Lessee" to "Lessor "
- 4 Paragraph 32, page 29, line 17 -- After "enter into " insert "Provided, however, that Lessee's remedy for breach of this covenant shall be limited to right to sue for damages, and provided, further, that this covenant shall not be binding on the first mortgagee acquiring title through foreclosure or deed of trust in lieu of foreclosure, but shall remain in full force and effect and be binding upon any party acquiring title through Lessor or the first mortgagee "
- 5 Paragraph 39, page 31, line 2 -- Delete "to any mortgages" and insert "to the first mortgage"

Paragraph 39, page 31, line 6 -- After "default " insert "This lease shall not be subordinate to any mortgages except the first mortgage "

Dated February 12, 1980

FLEMING COMPANIES, INC  
Lessee

EAST PARK PLAZA, INC  
Lessor

By Scott L. Wiegert  
Vice Pres  
By Robert W. Smith  
PRESIDENT

By Scott L. Wiegert  
V-PRESIDENT

STATE OF NEBRASKA )  
COUNTY OF LANCASTER ) SS

On this 12th day of February, 1980, before me, the undersigned, a Notary Public in and for said County, personally appeared Scott L. Wiegert, Vice President of East Park Plaza, Inc , to me personally known to be the Vice President and the identical person whose name is affixed to the above instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of the said East Park Plaza, Inc , and that the corporate seal of the said East Park Plaza, Inc was thereto affixed by its authority

WITNESS my hand and notarial seal the day and year last above written

My Commission Expires  
April 5, 1981

Marion D. Golder  
Notary Public

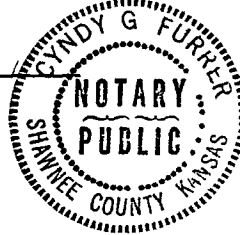
STATE OF KANSAS )  
COUNTY OF SHAWNEE ) SS

BE IT REMEMBERED, that on this 12th day of February, A D 1980, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came

Wanda Freeman Vice President of Fleming Companies, Inc., a corporation duly organized, incorporated, and existing under and by virtue of the laws of Kansas, and Robert W. Smith, Assistant Secretary of said corporation, who are personally known to me to be such officers and who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written

My Commission Expires  
11-1-83



Cyndy G. Furrer  
Notary Public

AMENDMENT TO LEASE  
BETWEEN EAST PARK PLAZA, INC., LESSOR,  
AND FLEMING COMPANIES, INC., LESSEE

This Agreement is made and entered into this 11<sup>th</sup> day of February, 1985, by and between East Park Plaza, Inc., a Nebraska corporation ("Lessor"), and Fleming Companies, Inc., an Oklahoma corporation ("Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a certain Build and Lease Agreement between them, dated November 11, 1977 ("Lease") for the construction and lease of a building ("Building"), located upon certain real estate in Lincoln, Lancaster County, Nebraska, which constitutes a part of the East Park Plaza Shopping Center and which is more particularly described in Exhibit A, attached hereto and made a part hereof by this reference;

WHEREAS, the Sublessee of the demised premises has installed a freezer and constructed a freezer enclosure at the southeast corner of the Building,

WHEREAS, the location of the freezer and the enclosure constructed by the Sublessee at the southeast corner of the Building may be in violation of a pipeline easement ("Easement") granted to Cengas ("Grantee"), dated September 12, 1979, and filed with the Lancaster County Register of Deeds on September 20, 1979 as Inst. No. 79-24711, as shown on Exhibit B, attached hereto and made a part hereof by this reference;

WHEREAS, Lessor desires to assure that if the freezer and enclosure interferes with the use of the Easement by Grantee, that the Lessee will take whatever action is required, including,

if necessary, removal of the freezer and enclosure to give Grantee access to the Easement;

WHEREAS, Lessee desires to assure that the freezer and enclosure is not and shall not be declared by the Lessor to be a default on the Lease.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants contained herein, the parties agree to and do hereby amend the Lease to add the following paragraphs:

EASEMENT  
ENCROACHMENT

41. Lessee, at its expense, shall take such action as is necessary to give the Grantee access to the Easement, including, if necessary, removal of the freezer and/or freezer enclosure or any replacement improvements or structures described herein which encroach upon the Easement shown on Exhibit B attached hereto, upon the written request of the Grantee under the Easement, or their successors and assigns. Such action shall be accomplished within any reasonable time set forth in a written request by the Grantee under the Easement. Upon the failure of the Lessee to so remove the freezer, freezer enclosure, or any encroaching structure or improvement described herein, Lessor or Lessor's designee shall have the right to remove any encroaching property, at Lessee's expense.

CONSENT TO  
EASEMENT  
ENCROACHMENT

42. Lessor hereby consents to the continued existence of the freezer and enclosure described herein and any replacements thereof, and agrees that the possible encroachment does not and shall not be considered a default under the terms of the Lease, provided Lessee performs its obligations under the terms of paragraph 41.

This Amendment to Build and Lease Agreement shall be binding upon, and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Dated this 11<sup>th</sup> day of February, 1985.

EAST PARK PLAZA INC., Lessor

By

By

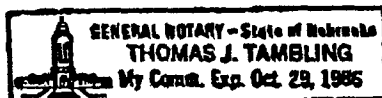
FLEMING COMPANIES, INC., Lessee

By

By

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this  
17th day of February, 1985, by DONALD E. LEONARD and  
ROBERTA KING, PRESIDENT and ASST. SECRETARY TREAS.  
of East Park Plaza, Inc., a Nebraska corporation, on behalf of the  
corporation.



Thomas J. Taveling  
Notary Public

STATE OF OKLAHOMA )  
 ) ss.  
COUNTY OF OKLAHOMA )

The foregoing instrument was acknowledged before me this  
11th day of February, 1985 by Robert W. Smith and  
James W. Clark, and  
of Fleming Companies, Inc., an Oklahoma corporation, on behalf of  
the corporation.

Jessie L. Walker  
Notary Public  
8-6-88

EXHIBIT "A"

(T-4800 REVISED)

A tract of land in the SE 1/4 of Section 21, Township 10 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, more particularly described as follows:

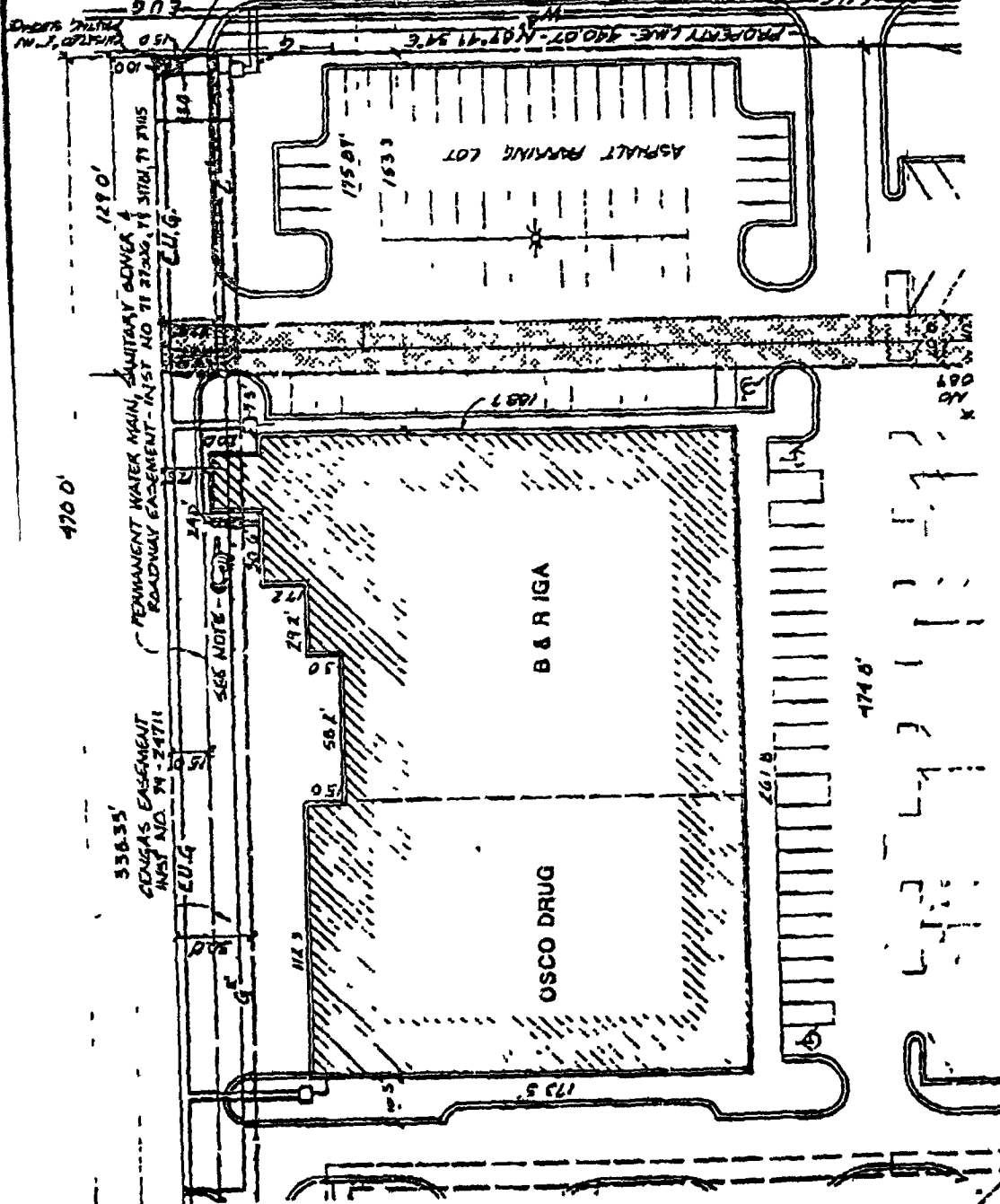
Beginning at a point 768.27 feet east of and 55.00 feet north of the pot at the intersection of centerline of 66th Street and the centerline of "O" Street (which is the south line of said SE 1/4), said centerline of "O" Street is assumed to bear North 89°49'34" East; thence North 00°03'31" West along a line which is midway between the centerline of 66th Street and centerline of 70th Street (which is the east line of said SE 1/4) a distance of 1112.63 feet to a witness pin; thence North 00°03'31" West along said midway line, a distance of 35.00 feet to a point on a curve and the centerline of Dead Man's Run, said along the arc of a curve to the left which is the centerline of Dead Man's Run; said curve having an initial tangent bearing of North 57°52'27" West, a radius of 716.20 feet and an interior angle of 25°14'34", a distance of 312.99 feet; thence North 83°07'01" West along the centerline of Dead Man's Run, a distance of 445.00 feet to a point 33.00 feet east of the centerline of 66th Street; thence South 00°07'01" East along a line 33.00 feet from and parallel with the centerline of 66th Street, a distance of 772.69 feet; thence North 89°52'59" East 2.00 feet; thence South 7°03'09" East 172.59 feet; thence South 0°07'01" East along a line 40.75 feet from and parallel with the centerline of 66th Street 122.50 feet; thence North 89°49'34" East along a line 295.00 feet from and parallel with the centerline of "O" Street, a distance of 254.25 feet; thence South 00°07'01" East along a line 295.00 feet from and parallel with the centerline of 66th Street, a distance of 185.00 feet; thence North 89°49'34" East along a line 110.00 feet from and parallel with the centerline of "O" Street, a distance of 33.20 feet; thence South 00°07'01" East along a line 328.20 feet from and parallel with the centerline of 66th Street, a distance of 55.00 feet; thence North 89°49'34" East along a line 55.00 feet from and parallel with the centerline of "O" Street, a distance of 440.07 feet to the point of beginning.

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NOTE: FREEZER ENCLOSURE AT SE CORNER OF B&R IGA IS 12' 5" IN VIOLATION OF CEVGA'S EASEMENT. LEASEHOLD IMPROVEMENT, BUILDING PERMIT NO 36512, NOVEMBER 3, 1983

STATE OF OKLAHOMA  
INST NO 70-6077



September 11, 2003

**VIA FEDERAL EXPRESS**

Bankruptcy Management Corporation  
1330 East Franklin Avenue  
El Segundo, CA 90245

Re Fleming Companies Inc  
Chapter 11  
Case No 03-10945

Dear Sir or Madam

Enclosed for filing with your office is an original and one copy of a proof of claim on behalf of Flowerview Associates Limited Partnership, regarding the above referenced case. Please date stamp the copy and return it to me in the enclosed self-addressed FedEx envelope.

Please call me at 860-251-5822 if you have any questions.

Sincerely,

  
Patricia C. Gagnon  
PACE Registered Paralegal

PCG/ssg  
Enclosures  
316391 v 01

cc Julie A. Manning, Esq.  
Ira H. Goldman, Esq.

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**In re Fleming Companies, Inc et al  
Case No 03-10945-(MFW)-11**

**DOCUMENTS APPENDED TO CLAIM**

On August 11, 2005, document(s) were appended to Claim Numbers **10567 and 17392** for the following reason(s)

- ☐ Stipulation and Settlement Agreement
- ☐ New Supporting Documents
- ☐ Change of Address
- ☐ Proof of Payment
- ☒ Other Docket Number 7049

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<p>-----X</p> <p>In re FLEMING COMPANIES, INC , et al.,  Debtors</p>	<p>Chapter 11</p> <p>Case No 03-10945 (MFW)</p> <p>Jointly Administered</p> <p><b>Objection Deadlines: August 11, 2003 at 12:00 p.m. (Eastern) (2716); February 25, 2004 at 5:00 p.m. (Eastern) (6717)</b></p> <p><b>Hearing Date March 3, 2004 at 10:30 a.m. (Eastern)</b></p> <p><b>Related Docket Nos.: 2716, 6717</b></p>
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**THIRTEENTH  
SUPPLEMENTAL ORDER APPROVING ASSUMPTION AND  
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES TO AWG ACQUISITION, LLC  
AND CERTAIN DESIGNEES**

Upon the motion<sup>1</sup> (the "Sale Motion") dated July 11, 2003 of Fleming Companies, Inc , Fleming Transportation Service, Inc , Piggly Wiggly Company, RFS Marketing Services, Inc , Fleming International, Ltd , Fleming Foods of Texas, L P , and Fleming Foods Management Co , LLC (collectively, the "Selling Debtors"), seven of the above-captioned debtors and debtors in possession (collectively, the "Debtors")<sup>2</sup> in the above-captioned cases, for entry of an order, under Sections 105(a), 363(b), (f), and (m), 364, 365, and 1146(c) of title 11 of the United States

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the APA (as defined herein) and the Sale Motion, and to the extent of any inconsistency, the APA shall govern.

<sup>2</sup> The Debtors are the following entities: Fleming Companies, Inc , ABCO Food Group, Inc , ABCO Markets Inc , ABCO Realty Corp , ASI Office Automation, Inc , C/M Products, Inc , Core-Mark Interrelated Companies, Inc , Core-Mark Mid-Continent Inc , Dunigan Fuels Inc , Favar Concepts, Ltd , Fleming Foods Management Co , L L C , Fleming Foods of Texas L P , Fleming International, Ltd , Fleming Supermarkets of Florida, Inc , Fleming Transportation Service Inc , Food 4 Less Beverage Company, Inc , Fuelserv Inc , General Acceptance Corporation Head Distributing Company Marquis Ventures Company Inc , Minter-Weisman Co , Piggly Wiggly Company, Progressive Realty, Inc , Rainbow Food Group, Inc , Retail Investments Inc , Retail Supermarkets, Inc , RFS Marketing Services Inc , and Richmar Foods, Inc

Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (A) approving the asset purchase agreement (as amended, the "APA", by and among the Selling Debtors, C&S Acquisition LLC, as Purchaser (including any affiliated assignee or designee of such company, the "Purchaser") and C&S Wholesale Grocers, Inc. ("C&S"), and such other agreements to be entered into among the parties thereto as contemplated therein, (B) authorizing (i) the sale (the "Sale") of substantially all of the Selling Debtors' assets and business operations relating to their Wholesale Distribution Business and certain other assets designated in the APA (the "Acquired Assets") free and clear of all Liens, claims, Encumbrances, Offset Rights, and Interests (except the Permitted Encumbrances and Assumed Liabilities under the APA), pursuant to and as described in the APA to Purchaser or any Third Party Purchaser (as defined therein), as the case may be, and (ii) the assumption and assignment to Purchaser or any Third Party Purchaser, as the case may be, of executory contracts and unexpired leases under Sections 365(a) and (f) of the Bankruptcy Code both as of the Initial Closing Date and during the Option Period, and (C) granting related relief, and upon the Order of this Court dated July 18, 2003, approving the bidding procedures in connection with the Sale and notice of the hearing with respect to the Sale (the "Bidding Procedures Order"), and upon the record made at hearings held before this Court with respect to the relief sought in the Sale Motion on August 4, 2003, August 7, 2003 and August 14, 2003 (collectively the "Sale Hearing"), including the relevant pleadings, the evidence proffered or adduced and arguments of counsel, and upon the Order of this Court dated August 15, 2003 approving the APA and the Sale (the "Sale Order"), and all parties in interest having been heard, or having had the opportunity to be heard, regarding the assumption and assignment of the executory contracts and unexpired leases to be assumed and assigned as of the next Subsequent Closing Date to

AWG Acquisition (the "AWG Acquired Contracts"), and it appearing from the affidavits of service filed with the Court that due and sufficient notice of the Sale Motion, the Initial Assignment List (as defined in the Bidding Procedures Order), and the relief granted by this Order have been provided to all parties affected thereby, and it further appearing that no other or further notice hereof is required, and upon the Court record of these cases, and it appearing that the relief requested in the Sale Motion regarding the assumption and assignment of the AWG Acquired Contracts is in the best interests of the Selling Debtors, their estates, creditors, and other parties-in-interest, and after due deliberation and good and sufficient cause appearing therefore, this Court hereby makes the following Findings of Fact and Conclusions of Law

**I FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

IT IS HEREBY FOUND AND DETERMINED THAT <sup>3</sup>

**Jurisdiction, Final Order and Statutory Predicates**

A The Court has jurisdiction to hear and determine the Sale Motion and to grant the relief requested therein, pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

B This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rule 6006(d), the parties may consummate the assumption and assignment of the AWG Acquired Contracts immediately upon entry of this Order. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052. Any statements of the Court from the bench at the Sale Hearing shall constitute additional findings of fact and conclusions of law as appropriate and are expressly incorporated by reference into this Order to the extent not inconsistent herewith.

C The statutory predicates for the relief sought herein are Sections 105(a) and 365 of the Bankruptcy Code, as complemented by Rules 2002, 6006(a) and (c) and 9014 of the Bankruptcy Rules

**Retention of Jurisdiction**

D It is necessary and appropriate for the Court to retain jurisdiction to, among others things, interpret, implement, and enforce the terms and provisions of this Order and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the assumption and assignment of the AWG Acquired Contracts

**Notice of the Assumption and Assignment**

E As evidenced by the affidavits of service previously filed with this Court, proper, timely, adequate, and sufficient notice of the assumption and assignment of the AWG Acquired Contracts has been provided in accordance with Sections 102(1) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6006, and 9014 and in substantial compliance with the Bidding Procedures Order

F Actual written notice of the August 14, 2003 hearing and the assumption and assignment of the AWG Acquired Contracts and a reasonable opportunity to object or be heard with respect to the assumption and assignment of the AWG Acquired Contracts has been afforded to all interested persons and entities, including, but not limited to (i) counsel to the Official Committee of Unsecured Creditors (the "Committee"), (ii) counsel to the Agents for the Debtors' pre-petition lenders and post-petition lenders, (iii), counsel to Purchaser; (iv) all non-debtor counterparties to the AWG Acquired Contracts, (v) counsel to the United States Trustee, and (vi) any entity that has filed a notice of appearance and demand for service of papers in these bankruptcy cases pursuant to Bankruptcy Rule 2002

G In accordance with the provisions of the Bidding Procedures Order and the hearing held on July 17, 2003, the Debtors served the Initial Assignment List (as defined in the Bidding Procedures Order) (Docket 2716) and a supplemental assignment list (the "Supplemental AWG List") (Docket 6717) (the Initial Assignment List and the Supplemental AWG List together are the "Assignment Lists") upon each non-debtor counterparty to an AWG Acquired Contract. The service of such Assignment Lists, in connection with service of the Original Cure Notice (as defined in the Sale Order), the Supplemental Cure Notice (as defined in the Sale Order) and notice of the Sale Motion and the hearing to consider the assumption and assignment of the AWG Acquired Contracts, was good and sufficient and appropriate under the circumstances and no further notice need be given in respect of the assumption and assignment of the AWG Acquired Contracts. Such non-debtor counterparties have had an opportunity to object to the assumption and assignment of their respective AWG Acquired Contracts, including without limitation, the cure amounts due and adequate assurance of future performance in respect thereof.

H On August 4, 2003, Purchaser identified AWG Acquisition, LLC ("AWG Acquisition"), a wholly owned subsidiary of Associated Wholesale Grocers, Inc. ("AWG"), as a Third Party Purchaser pursuant to the APA. Pursuant to the Sale Order, AWG Acquisition was approved as a Third Party Purchaser of certain of the Debtors' assets. The Assignment Lists specifically identified AWG Acquisition or its specifically identified designee(s) as the proposed assignee of the AWG Acquired Contracts.

I Based on the findings set forth in paragraphs E through H above, such notice was good and sufficient, and appropriate under the circumstances, and no other or further notice of the hearing to consider assumption and assignment originally scheduled for August 14, 2003, or



any adjournment or continuances thereof, shall be necessary or required

## **II. ORDERS OF THE COURT**

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS

1 The relief requested in the Sale Motion with respect to the assumption and assignment of the AWG Acquired Contracts is granted and approved to the extent provided herein, and the assumption and assignments contemplated thereby are hereby approved to the extent provided herein

2 Attached hereto as Exhibits A and B are schedules setting forth the AWG Acquired Contracts that the Selling Debtors are authorized to assume and assign to AWG Acquisition (Exhibit A) or its designee(s) (Exhibit B) as of the next Subsequent Closing Date. Subject to the terms of the APA, AWG Acquisition shall have the right to defer or revoke any AWG Acquired Contract from Exhibits A or B at any time prior to the next Subsequent Closing Date, and to the extent so deferred or revoked, such Acquired Contract shall no longer be deemed an AWG Acquired Contract. The Selling Debtors shall provide prompt notice to the non-debtor party to any Acquired Contract that is so revoked or deferred

3 The Selling Debtors and AWG Acquisition have cured (or as of the next Date, will have cured), or have provided adequate assurance of a prompt cure of, all defaults arising under the AWG Acquired Contracts that are required to be cured by Section 365(b)(1)(A) of the Bankruptcy Code (after giving effect to Section 365(b)(2) of the Bankruptcy Code)

4 As to each AWG Acquired Contract noted thereon, Exhibits A and B also set forth in the column headed "Cure Amount" the amount payable under Section 365(b)(1)(B) of the Bankruptcy Code (the "Cure Amount") for such AWG Acquired Contract. As to all

specified Cure Amounts, AWG Acquisition with respect to Exhibit A or the applicable designee with respect to Exhibit B shall pay, or cause to be paid from the Cure Escrow the applicable Cure Amount within 10 business days following the next Subsequent Closing Date. The provisions of this paragraph 4 satisfy the requirements under Section 365(b)(1)(B) of the Bankruptcy Code that the Selling Debtors compensate or provide adequate assurance of prompt compensation for any defaults as to each of the AWG Acquired Contracts. The non-debtor parties to the AWG Acquired Contracts shall not be entitled to any further or additional compensation other than as provided in this paragraph 4 on account of defaults under its AWG Acquired Contract accruing, arising or otherwise relating to the period prior to the next Subsequent Closing Date.

5 With respect to each AWG Acquired Contract listed on Exhibit A, AWG Acquisition has provided adequate assurance of future performance under such AWG Acquired Contract pursuant to Section 365(b)(1)(C) of the Bankruptcy Code in that, among other things (x) AWG Acquisition's affiliate, AWG, has a long history of successful operations in the wholesale distribution business, (y) AWG has agreed to assist AWG Acquisition in fulfilling its obligations under the AWG Assigned Contracts and (z) AWG Acquisition has demonstrated sufficient initial capitalization and projected operating cash flow to meet its obligations under the AWG Acquired Contracts. With respect to each AWG Acquired Contract listed on Exhibit B, the applicable designee has provided adequate assurance of future performance under such AWG Acquired Contract pursuant to Section 365(b)(1)(C) of the Bankruptcy Code in that, among other things (x) such designee has been the Debtors' subtenant at the applicable lease location for a number of years, (y) such designee has performed under such sublease, and (z) such designee has agreed to fulfill the Debtors' obligations under such contracts and leases so assigned.

6 All objections to the assumption and assignment of the AWG Acquired Contracts listed on Exhibits A and B that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits

7 The effective date of assignment for all those AWG Acquired Contracts listed on Exhibits A and B except Lease No. MS-210 is the next Subsequent Closing Date. The effective date of assignment for AWG Acquired Contract Lease No. MS-210 is August 28, 2003.

8 With respect to those AWG Acquired Contracts being assigned to AWG Acquisition on the next Subsequent Closing Date, none of C&S, Purchaser or any of their affiliates, successors or assigns, shall have any liability or obligations, and, subject to the terms of the Joinder Agreement, AWG Acquisition as to the AWG Acquired Contracts listed on Exhibit A or the applicable designee as to the AWG Acquired Contracts listed on Exhibit B, as the case may be, shall be the sole party responsible for the liabilities and obligations under such AWG Acquired Contract arising or relating to the period from and after the effective date of such assignment to AWG Acquisition. Similarly, none of AWG, AWG Acquisition or any of their affiliates, successors or assigns, shall have any liability or obligations, and, subject to terms of the APA, C&S, Purchaser, their affiliates or other Third Party Purchaser, as the case may be, shall be the sole party responsible for the liabilities and obligations under any Acquired Contract that is not an AWG Acquired Contract arising or relating to the period from and after the effective date of such assignment of such other Acquired Contract to either C&S, Purchaser, their affiliates or other Third Party Purchaser. With respect to those AWG Acquired Contracts being assigned to AWG Acquisition on the next Subsequent Closing Date, none of the Debtors or their respective successors shall be responsible for the liabilities or obligations under such AWG Acquired Contract arising or relating to the period of time from and after the effective date

of such assignment to AWG Acquisition

9 With respect to those AWG Acquired Contracts being assigned to AWG Acquisition or its designee on the next Subsequent Closing Date, upon the assignment, the Debtors shall assign and relinquish all of their right, title, and interest in the AWG Acquired Contracts and the respective premises, including any and all possessory rights, to AWG Acquisition or, if applicable, the designee set forth in Exhibit B. Further, with respect to those AWG Acquired Contracts being assigned to AWG Acquisition's designee and listed on Exhibit B, upon the assignment, AWG and AWG Acquisition relinquish all of its right, title, and interest in the AWG Acquired Contracts listed on Exhibit B and the respective premises, including any and all possessory rights.

10 Any provision restricting the assignment of or the effectiveness of any AWG Acquired Contract shall be null, void and of no force and effect in connection with the assignment to Purchaser or any of its designees, including without limitation, the following provisions:

(i) any provision of any AWG Acquired Contract or any agreement ancillary thereto that purports to prohibit, condition, or otherwise restrict the assignment by the Selling Debtors to AWG Acquisition,

(ii) any provision of any AWG Acquired Contract or agreement ancillary thereto that permits the landlord at any time after closing to declare a default, terminate, modify, or cancel the lease, increase the payments or obligations thereunder (including without limitation, increasing the rent), exercise a right (whether based in law, equity, or otherwise) of recapture or termination, require the payment of any fee, impose any penalty, prevent the assignee from exercising any renewal options, seek damages, or seek

other relief by reason of (a) the assignment of the lease to AWG Acquisition or its designee(s) or (b) a change of control of the Selling Debtors,

(iii) any provision of any AWG Acquired Contract or agreement ancillary thereto that purports to terminate or modify the applicable agreement (including without limitation, by increasing the rental obligations) if any of the Selling Debtors cease to be a party to such agreement, or

(iv) any provision that requires a payment to any entity, including without limitation, the non-debtor party, as a result of, as a condition to, or relating to the transfer or assignment of such agreement

11 Pursuant to Section 365(k) of the Bankruptcy Code, the Debtors shall have no liability under any AWG Acquired Contract (that has not been deferred or revoked) following the next Subsequent Closing Date

12 Subject to the payment of the Cure Amount identified in paragraph 4, each non-debtor party to an AWG Acquired Contract is hereby barred from asserting against AWG, AWG Acquisition, or any designee any default, claim or liability existing, accrued, arising or relating to a period prior to the next Subsequent Closing Date. AWG and AWG Acquisition have entered into certain settlement agreements with certain contract counter-parties identified on Exhibit "A" in consideration for their withdrawal of their respective objections to the assumption and assignment of their respective contracts to AWG Acquisition, and nothing in this paragraph is intended, nor shall it be deemed, to limit or extinguish the rights of AWG, AWG Acquisition or such counter-parties to enforce the terms of their respective settlement agreements

13 The failure (if any) of the Selling Debtors or AWG, AWG Acquisition, or any designee to enforce at any time one or more terms or conditions of any AWG Acquired Contract

**Exhibit "A"**  
**Thirteenth Supplemental Order**  
**Assume and Assign**

Contract Counter Party	Party ID	Contract ID	Contract Description	Contract Type	Effective Date	Termination Date	Settlement Amount
1 C & B Development Inc		7465		FSA	6/17	2/3/2004	\$0.00
2 Food Giant Supermarkets Inc		5018		FSA	6/17	2/13/2004	Per settlement
3 Food Giant Supermarkets Inc		7486		FSA	6/17	2/13/2004	Per settlement
4 GES 1556		7467		FSA	6/17	2/13/2004	Per settlement
5 Hillcrest Foods Inc		7459		Supply Agreement	6/17	2/13/2004	\$0.00
6 HCR Management LLC		4637		FSA	2/16	8/4/2003	Per settlement
7 Hometown Grocery of Decatur Inc		7333		FSA	6/17	2/13/2004	Per settlement
8 Hometown Grocery of Hartselle Inc		7449		FSA	6/17	2/13/2004	Per settlement
9 Hometown Grocery of Oneonta		7334		FSA	6/17	2/13/2004	Per settlement
10 Hometown Grocery Inc		4805		FSA	2/16	8/4/2003	Per settlement
11 Hometown Grocery Inc		4806		FSA	2/16	8/4/2003	Per settlement
12 Hometown Grocery Inc		4807		FSA	2/16	8/4/2003	Per settlement
13 Hometown Market of Hartselle		4808		FSA	2/16	8/4/2003	Per settlement
14 Hometown Market of Hartselle Inc		1128		Equipment Lease	6/17	2/13/2004	Per settlement
15 Kelley Foods LLC		7450		FSA	6/17	2/13/2004	Per settlement
16 L & K Foods LLC		7459		FSA	6/17	2/13/2004	Per settlement
17 Murphy & Sons Food Stores Inc		7453		Sign Lease	6/17	2/13/2004	\$0.00

Case Number	Case Name	Case Type	Case Status	Case Description	Case Date	Case Amount
18	Murphy & Sons Food Stores Inc	7454		License Agreement H G Hld	8/17/2004	\$0.00
19	Murphy & Sons Food Stores Inc	797		Sign Lease	8/17/2004	\$0.00
20	North Huntville Lucky's Inc	7457		Supply Agreement	8/17/2004	Per settlement
21	Qeaser Food Stores Inc	887		FSA	8/17/2004	Per settlement
22	R & P Foods LLC	7455		Supply Agreement	8/17/2004	Per settlement
23	Regland Bros Supermarkets Inc	5249		FSA	8/17/2004	Per settlement
24	S&C Foods Inc	2147		Sign Lease	8/17/2004	Per settlement
25	S&C Foods Inc	2148		Sign Lease	8/17/2004	Per settlement
26	S&C Foods Inc	2209		Supply Agreement	8/17/2004	Per settlement
27	S&C Foods Inc	2210		FSA	8/17/2004	Per settlement
28	S&C Foods Inc	2211		FSA	8/17/2004	Per settlement
29	S&C Foods Inc	4984		FSA	8/17/2004	Per settlement
30	S&C Foods Inc	4985		FSA	8/17/2004	Per settlement
31	S&C Foods Inc	4986		Supply Agreement	8/17/2004	Per settlement
32	S&C Foods Inc	4987		FSA	8/17/2004	Per settlement
33	S&C Foods Inc	5018		FSA	8/17/2004	Per settlement
34	S&C Foods Inc	5017		Supply Agreement	8/17/2004	Per settlement
35	T&K Foods LLC	830		Sign Lease	8/17/2004	Per settlement

**Exhibit "A"**  
**Thirteenth Supplemental Order**  
**Assume and Assign**

Case No.	Plaintiff	Defendant	Case No.	Case Name	County	Amount	Settlement Date	Settlement Type	Court Approval
36	The Realty Associates Fund VI L P	MS-210	7184	2929 Stateline Road	Southaven	MS	2/13/2004	Real Estate Sublease	Per settlement
37	W K Corporation		7458				2/13/2004	Supply Agreement	Per settlement
38	Wada's Food Center Inc		5202				2/13/2004	FSA	Per settlement



**Exhibit "B"**

SA	Coastal Counter Party	File ID#	Case#	Address	City	State	Property Type	Address	Effective Date	Case Amount	Assignee
1	B & R Stores Inc	NE 111a	6352	Russ IGA	130 N 66th Street	Lincoln	NE	Real Estate Sublease	6/17	\$0 00	B & R Stores Inc
2	Flower View Associates	NE 111	6578	Russ IGA	130 N 66th Street	Lincoln	NE	Real Estate Lease	6/17	\$0 00	B & R Stores Inc